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Attorneys for Complainant

**BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

| | |
|----------------------------------|---------------------------|
| In the Matter of the Accusation) | NO. AC-97-13 |
| Against: |) |
| |) |
| ALAN WILLIAM FRAY |) <u>DEFAULT DECISION</u> |
| 2180 Garnet Ave., Suite 3C |) |
| San Diego, CA 92109 |) [Gov. Code §11520] |
| |) |
| Certificate No. CPA 30496 |) |
| |) |
| Respondent.) |) |

FINDINGS OF FACT

1. On or about September 22, 1997, Complainant Carol B. Sigmann, in her official capacity as Executive Officer of the Board of Accountancy, Department of Consumer Affairs, State of California ("Board"), filed Accusation No. AC-97-13 ("Accusation") against Alan William Fray ("Respondent").

2. On or about October 31, 1997, Mona Ordonez, an employee of the Office of the Attorney General, sent, both by first class mail and by certified mail (Certification No. P 053 671 696), a copy of the Accusation, Statement to Respondent, copies of Government Code sections 11507.5, 11507.6, and 11507.7, three

1 copies of Notice of Defense forms, and a Request for Discovery, to
2 Respondent's address of record with the Board which was and is 2180
3 Garnet Ave., Suite 3C, San Diego, CA 92109. On or about November
4 26, 1997, the aforementioned certified mailing was returned by the
5 U.S. Postal Service to the Office of the Attorney General marked
6 "Unclaimed" and marked "Notify Sender of New Address: Fray, Alan
7 W., P.O. Box 86097, San Diego, CA 92138-6097". The first class
8 mailing described above was not returned by the U.S. Postal Service
9 and is presumed to have been delivered.

10 3. On or about December 5, 1997, Mona Ordonez, an
11 employee of the Office of the Attorney General, sent by certified
12 mail (Certification No. P 053 571 680) a copy of the Accusation,
13 Statement to Respondent, copies of Government Code sections
14 11507.5, 11507.6, and 11507.7, three copies of Notice of Defense
15 forms, and a Request for Discovery, to Respondent's forwarding
16 address: P.O. Box 86097, San Diego, CA 92138-6097. On or about
17 January 6, 1998, the aforementioned certified mailing was returned
18 by the U.S. Postal Service to the Office of the Attorney General
19 marked "Unclaimed."

20 4. The above-described services are effective as a
21 matter of law pursuant to the provisions of California Government
22 Code section 11505, subdivision (c).

23 5. On October 3, 1980, the Board issued CPA Certificate
24 No. 30496 to Respondent. At all times relevant herein, said
25 Certificate was in full force and effect.

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1 6. California Business and Professions Code section 118
2 provides, in pertinent part:

3 "(b) The suspension, expiration, or forfeiture by
4 operation of law of a license issued by a board in the
5 department, or its suspension, forfeiture, or cancellation by
6 order of the board or by order of a court of law, or its
7 surrender without the written consent of the board, shall not,
8 during any period in which it may be renewed, restored,
9 reissued, or reinstated, deprive the board of its authority to
10 institute or continue a disciplinary proceeding against the
11 licensee upon any ground provided by law or to enter an order
12 suspending or revoking the license or otherwise taking
13 disciplinary action against the license on any such ground."

14 7. California Government Code section 11506 provides, in
15 pertinent part:

16 "(c) The respondent shall be entitled to a hearing on the
17 merits if the respondent files a notice of defense, and the
18 notice shall be deemed a specific denial of all parts of the
19 accusation not expressly admitted. Failure to file such
20 notice shall constitute a waiver of respondent's right to a
21 hearing, but the agency in its discretion may nevertheless
22 grant a hearing. ..."

23 8. Respondent failed to file a Notice of Defense within
24 15 days after service upon him of the Accusation and therefore
25 waived his right to a hearing on the merits of the Accusation.

26 9. California Government Code section 11520 provides, in
27 pertinent part:

1 "(a) If the Respondent either fails to file a notice of
2 defense or to appear at the hearing, the agency may take
3 action based upon the respondent's express admissions or upon
4 other evidence and affidavits may be used as evidence without
5 any notice to Respondent; ..."

6 10. The Board is authorized to revoke Respondent's
7 Certificate pursuant to the following:

8 a. California Business and Professions Code
9 section 5100 provides that the Board may revoke, suspend or refuse
10 to renew the permit or certificate of any licensee for
11 unprofessional conduct, which conduct includes willful violation of
12 any provision of accountancy board law or any rule or regulation
13 promulgated by the board (subdivision "f").

14 b. California Business and Professions Code
15 section 125.9 provides that any board, bureau or commission within
16 the department may establish by regulation, a system for issuance
17 to a licensee of a citation which may contain an order of abatement
18 or an order to pay an administrative fine assessed by the board,
19 bureau, or commission where the licensee is in violation of the
20 applicable licensing act or any regulation adopted pursuant
21 thereto.

22 c. Title 16, California Code of Regulation section
23 95 provides authority for the executive officer of the Board to
24 issue a citation in lieu of filing an Accusation for a violation of
25 any provision of the Accountancy Act or any regulation adopted by
26 the Board.

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1 d. Title 16, California Code of Regulation section
2 95.4 provides that the failure of a licensee to comply with a
3 citation containing an assessment of an administrative fine, an
4 order of correction or abatement or both an administrative fine and
5 an order of correction or abatement after this citation is final
6 and has been served in accordance with the provisions of Section
7 11505(c) of the Government Code shall constitute a ground for
8 revocation or suspension of the license or permit.

9 11. Pursuant to its authority under Government Code
10 section 11520 and based on the evidence before it, the Board finds
11 that the allegations, and each of them, contained in the Accusation
12 are true. The evidence before the Board consists of the following:

13 a. Accusation AC-97-13, signed September 22, 1997.

14 b. Declaration of Service by Mail dated October 31,
15 1997 by Mona Ordonez.

16 c. Declaration of Service by Certified Mail dated
17 October 31, 1997 by Mona Ordonez.

18 d. Declaration of Service by Certified Mail dated
19 December 5, 1997 by Mona Ordonez.

20 e. The returned mailing of U.S. Postal Service
21 Certified Mail No. P 053 671 696.

22 f. The returned mailing of U.S. Postal Service
23 Certified Mail No. P 053 571 680.

24 g. The Certificate of License History, certified by
25 Lawrence M. Knapp, Jr. on September 23, 1997.

26 h. The investigation of Complaint Matter: A-96-
27 580/CT-96-30 and its six exhibits.

DETERMINATION OF ISSUES

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2 1. Respondent is subject to disciplinary action pursuant
3 to California Business and Professions Code section 5100 and
4 pursuant to Code of Regulation section 95.4, by reason of the
5 Finding of Facts numbers 1 through 11, above.

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DECISION AND ORDER OF THE BOARD

Certificate number CPA 30496, heretofore issued to Respondent, Alan William Fray, is hereby revoked.

An effective date of March 8th, 1998, has been assigned to this Order.

Pursuant to California Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The motion must be made in writing to the Board of Accountancy, 2000 Evergreen Street, Ste 250, Sacramento, California 95815, within seven days after service on the Respondent of the default decision.

Made this 6th day of February, 1998.



FOR THE BOARD OF ACCOUNTANCY

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| In the Matter of the Accusation |) | NO. AC-97-13 |
| Against: |) | |
| |) | |
| ALAN WILLIAM FRAY |) | <u>ACCUSATION</u> |
| 2180 Garnet Ave., Suite 3C |) | |
| San Diego, CA 92109 |) | |
| |) | |
| Certificate No. CPA 30496 |) | |
| |) | |
| Respondent. |) | |

Carol B. Sigmann, ("Complainant"), as cause for
disciplinary action, alleges:

1. Complainant is the Executive Officer of the
California State Board of Accountancy ("Board") and makes and
files this accusation solely in her official capacity.

License History

2. On or about October 3, 1980, the Board issued
Certificate No. CPA 30496 to Alan William Fray ("Respondent").
Said certificate is currently in force and due to expire on
October 1, 1997, unless renewed. On April 3, 1996, Citation
Number 96-30 was issued against Respondent by Complainant.

1 Statutes and Regulations

2 3. This accusation refers to the following statutes of
3 the California Business and Professions Code ("Code"):

4 A. Code section 5100 provides that the Board may
5 revoke, suspend or refuse to renew the permit or certificate of
6 any licensee for unprofessional conduct, which conduct includes
7 wilful violation of any provision of accountancy board law or any
8 rule or regulation promulgated by the board (subdivision "f").

9 B. Code section 118(b) provides that the
10 suspension, expiration, or forfeiture by operation of law of a
11 license issued by a board in the department, or its suspension,
12 forfeiture, or cancellation by order of the board or by order of
13 a court of law, or its surrender without the written consent of
14 the board, shall not, during any period in which it may be
15 renewed, restored, reissued, or reinstated, deprive the board of
16 its authority to institute or continue a disciplinary proceeding
17 against the licensee upon any ground provided by law or to enter
18 an order suspending or revoking the license or otherwise taking
19 disciplinary action against the licensee on any such ground.

20 C. Code section 125.9 provides that any board,
21 bureau or commission within the department may establish by
22 regulation, a system for issuance to a licensee of a citation
23 which may contain an order of abatement or an order to pay an
24 administrative fine assessed by the board, bureau, or commission
25 where the licensee is in violation of the applicable licensing
26 act or any regulation adopted pursuant thereto.

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1 4. This accusation refers to the following sections of
2 Title 16, California Code of Regulation ("CCR"):

3 A. CCR section 95 provides authority for the
4 executive officer of the Board to issue a citation in lieu of
5 filing an Accusation for a violation of any provision of the
6 Accountancy Act or any regulation adopted by the Board.

7 B. CCR section 95.4 provides:

8 "The failure of a licensee to comply with a citation
9 containing an assessment of an administrative fine, an order
10 of correction or abatement or both an administrative fine
11 and an order of correction or abatement after this citation
12 is final and has been served in accordance with the
13 provisions of Section 11505(c) of the Government Code shall
14 constitute a ground for revocation or suspension of the
15 license or permit."

16 Charges and Allegations

17 5. Respondent's license is subject to disciplinary
18 action pursuant to Code section 5100(f), in conjunction with CCR
19 section 95.4, based on the following: Citation No. 96-30 was
20 issued and was duly served upon respondent in April of 1996. The
21 Citation contained orders of abatement and correction and an
22 order to pay administrative fines. Respondent has neither
23 appealed the citation nor complied with its orders of abatement
24 or correction or its order to pay administrative fines as of the
25 date of this Accusation.

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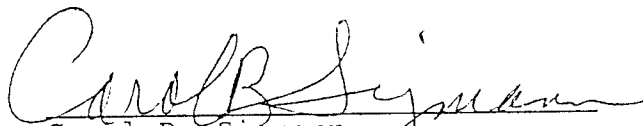
PRAYER

WHEREFORE, Complainant requests that the Board hold a hearing on the matters alleged herein, and that following said hearing, the Board issue a decision:

1. Revoking or suspending Certificate Number CPA 30496, heretofore issued to Respondent;

2. Taking such other and further action as the Board deems appropriate.

DATED: September 22, 1997



Carol B. Sigmund
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant